

Ayres, Donald

From: Gonzalez, Maria
Sent: Tuesday, April 09, 2013 6:07 PM
To: Guevara, David
Cc: Lam, Shelly; Jansen, Sally
Attachments: AOCsent040913.pdf; Confidentiality agreement for CBI documents040813.doc

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CONFIDENTIAL: FOR DISCUSSION PURPOSES ONLY

I am attaching the current revision of the AOC. The language and terms of the attached draft are subject to Agency review. Until we receive an updated cost summary, it defines the past costs through December, 2012. While I expect to get an updated cost summary soon, a full cost documentation package could take months. I would like to see if we can hone in on information your insurer needs, to reduce the costs and time. The contractor progress reports we have already provided were redacted. U.S. EPA's Office of General Counsel made a final determination that specific information provided by U.S. EPA contractors is confidential business information in Class Determination 1-95, which is available at the following link: <http://www.epa.gov/oam/foia/i95.pdf> . We may need to obtain a confidentiality agreement to provide information, such as contractor hourly rates, that has been determined to be CBI. I am attaching a draft confidentiality agreement.

The language in the draft AOC about basing the billing on itemized cost summaries comes from EPA's model AOC. The agency does not want to enter into settlements that will require it to incur the resources, time and costs entailed in preparing a cost documentation package whenever it sends a bill. As you can see from the case law I cited earlier, that level of documentation is not even required at trial. The government has used itemized cost summaries to support its oversight costs. See generally *U.S. v. Wauconda Sand & Gravel Co.* , No. 93 C 7637, 2011 U.S. Dist. LEXIS 128410 (N.D. Ill. Nov. 7, 2011); *U.S. v. Outboard Marine Corp.*, Nos. 88 C 8571 and 88 C 8572, 1997 U.S. Dist. LEXIS 10986 (N.D. Ill. July 21, 1997).

Please let me know your availability for a call to discuss cost documentation and finalizing the AOC. We can also discuss the status of the Dixon Road Site.

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